

## **MINUTES**

### **RILEY COUNTY PLANNING BOARD**

**Monday, September 13, 2004  
7:30 p.m.**

**Manhattan City Hall  
Commission Meeting Room**

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Members Present: Jon Larson– Chair  
Buck Gehrt – Vice Chair  
Lorn Clement  
Rebecca Mosier  
Dr. Tom Taul

Staff Present: Monty Wedel – Planning Director; Bob Isaac – Planner; Sherie Taylor – Administrative Assistant; Amanda Smith – Clerical Assistant.

Others Present: Charlie White – petitioner representative; 63 other interested persons.

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The minutes of the August 9, 2004 meeting were approved.

The Report of Fees for the month of August 2004 was approved. The fees collected in August totaled \$1540.00.

#### **PUBLIC HEARING – FIRST NATIONAL BANK OF WAMEGO – PLAT/REZONE**

Chairman Larson opened the public hearing at the request of First Bank of Wamego, petitioner and owner, to rezone a tract of land located in Wildcat Township, Section 19, Township 9 South, Range 7 East from Zone G-1 (General Agricultural) to Zone A-5 (Single Family Residential) and to plat the aforementioned tract of land into one (1) residential lot to be known as Providence Place Subdivision.

Dr. Taul explained that he has been involved in the past with negotiations regarding purchasing the property and may have future negotiations on the remaining 30 acres and therefore excused himself from the public hearing.

Bob Isaac, Planner, presented the staff report. He explained the location and background of the site. He stated that the property was presently developed with a building that was originally built with offices in the lower level and a residence on the upper level. Mr. Isaac explained that the property was currently served by an on-site well and septic system, but the Applicant has proposed replacing the septic system with a wastewater detention pond (lagoon). Mr. Isaac stated that the request had been reviewed with and found to be in conformance with the 1988 Urban Area Comprehensive Plan. Staff recommended approval of the request to rezone and plat the property.

Chairman Larson called the petitioner representative forward. Charlie White said he had no comments in addition to Bob Isaac's staff presentation.

Lorn Clement asked why 20 acres was not being sold with the house to prevent platting and rezoning.

Charlie White explained that one reason was the price of land is high in this area. He also stated that the interested buyer desires to purchase only 10 acres. He explained that the remaining 30 acres would still be large enough for agricultural use.

Chairman Larson asked if anyone wanted to speak for or against the request.

Roma Robinson, a property owner within 1000', asked what was implied by the comment regarding future development.

Bob Isaac explained that last winter, water pipes froze and broke causing considerable damage to the lower level and major renovations to repair it. The proposed buyer has a large family and is interested in renovating the entire structure into a house. The Applicant has made no inference regarding future subdivision of the subject property or the remaining 30 acres of the original parent tract.

No one else wanted to speak for or against the request, therefore the public hearing was closed.

Lorn Clement stated that it worries him that if this 10 acres is subdivided off, the remaining 30 will eventually be broken into 10 acre tracts. He explained that his dilemma was that the current regulations call for 20 acres in order to build a residence. On the other hand, the Planning Board would like to direct residential growth to certain areas and the Sedalia Church area is one of those areas in transition between agricultural uses and development. Clement also explained that the fact the property consists almost entirely of prime soils is not an issue, due to the existing structure on the property.

Roma Robinson asked that the Board member that stepped down to explain his inference to future development. Dr. Taul explained that he excused himself from voting due to his past and future "negotiations" of the property, not future "development" of the property.

Buck Gehrt moved to recommend approval of the rezoning request to the Board of County Commissioners. Becky Mosier seconded. The motion carried 3-1. Lorn Clement voted in opposition to the request.

Buck Gehrt moved to approve the request to plat. Becky Mosier seconded. The motion carried 4-0.

Bob Isaac announced that the Board of County Commissioners will consider these petitions on September 30, 2004 at 9:45.

## **PUBLIC HEARING – WIND ENERGY CONVERSION SYSTEM REGULATIONS**

Chairman Larson opened the public hearing at the request of the Riley County Planning Board to amend the Riley County Zoning Regulations, specifically, adding definitions to Section 2 - Definitions; adding language to clarify the permitted use of noncommercial wind energy systems to Section 8 - G Zones; and adding Section 22B - Special Uses, which include specific requirements for Commercial Wind Energy Conversion Systems (WECS).

Chairman Larson explained that this public hearing is to determine whether or not to accept the proposed regulations for wind farms. He stated that the public hearing is not to decide whether or not Riley County should permit wind farms, but how they will be regulated. He stated that at a previous Planning Board meeting, a motion was made to prohibit wind farms in Riley County and died due to the lack of second. Chairman Larson stated that comments will be limited to approximately 3 minutes per person and he asked that comments do not repeat other people's comments.

Monty Wedel presented the staff report and reminded the Board that the proposed regulations have been 10 months in the making. He explained that the proposed regulations would require an application for a special use instead of a conditional use. He also stated that if the Board does not adopt some type of regulations, that a wind farm could possibly be permitted in the ag zone or would go through an inadequate review process as a public utility under the Public Utilities and Facilities section of the current regulations which has minimal standards for projects of this type. Wedel then reviewed the proposed regulations section by section to explain the purpose and reasoning behind each section. He indicated that the Manhattan Urban Area Planning Board would also conduct a public hearing on the proposed regulations on September 20, 2004 and then the matter would proceed to the Board of County Commissioners for a final decision.

Chairman Larson then called for public comment on the proposed regulations.

Dan Ward, Director of Kansas Wildlife Federation, expressed concern that allowing the wind farms in all G-1 areas is too broad. The Kansas Geological Survey, acting on instructions by Governor Sebelius, are currently putting together a detailed map of the areas of intact prairie and areas that are not intact prairie in the Flint Hills. They asked that wind development be postponed until this is completed. Ward also asked that wording be added to allow wind farms in G-1 areas that are not considered intact prairie. He asked that "species in need of conservation" be added to Application Requirements Item 9b. Under Siting and Performance Standards, Item 10, he felt a definition of "screened from view" needs to be added. Under Siting and Performance Standards, Items 18 and 19, he asked that "turbine height" be clarified as to the total height (including the blades) or just the height of the tower itself. He also thought that "no advertising on turbines" needed to be more clear.

Suzie Pickering commented that if 60 to 80 homes were built in the same area instead of 60 to 80 wind turbines, more negative affects would take place. She stated that power lines and phone lines kill more birds per year than wind turbine utility lines, as wind turbine lines are underground. She also stated that a house cat kills 18 birds per year. Trash trucks and propane

trucks ruin roads more than traffic to wind turbines will. She also mentioned that water and sewer lines also ruin land.

George LeRoux, Flint Hills Prairie Bison Reserve in Wabaunsee County, stated that wind farm sprawl needs to be addressed in the regulations.

Pete Gehrt, Deep Creek resident, stated that after 30 years of having wind farms, Denmark has outlawed wind turbines on shore. He stated that the low frequency noise emitted by the turbines can affect the health of persons living up to a mile away. He also stated that a turbine cannot produce enough power to offset the energy it takes to install a wind turbine.

Wayne Corn had concerns about the strobe lights and their affect on the prairie at night. He was curious how the FAA determined when red lights are not adequate. Monty Wedel stated that the FAA gets involved whenever the tower is over 200' tall because of the need to alert aircraft. Wedel was not aware of any circumstances under which FAA would not allow red lights at night instead of white strobe lights.

Chairman Larson reminded everyone that comments should be directed to the proposed regulations, not to particular areas of the County where wind farms might be located or to the merits of wind energy or the merits of locating projects in the Flint Hills.

Tom Finney, Zeandale Township Clerk, asked what protection the township had regarding expenses regarding damaged to the roads. Monty Wedel explained that damage to roads would be addressed in the application process. The application requires data regarding anticipated traffic volumes and other impacts, plus assurances as to how the damage will be repaired.

Michael Stubbs, Wabaunsee County resident, attended the meeting where the Board did not second a motion to prohibit wind farms and asked what legal advice the Board had received regarding prohibiting wind farms and wanted to know what each members reason was for not seconding the motion.

Chairman Larson answered that anyone should have the opportunity to make an application and that regulations are needed to address that application.

Buck Gehrt answered by stating facts regarding the amount of water consumed by power plants and pollutants put into the air from coal burning are guiding him not to ban wind farms.

Becky Mosier agreed with Chairman Larson's comments and also stated that adopting regulations does not mean the Board will approve a wind farm application. She said that regulations were recently adopted for adult entertainment, but that doesn't mean the Board will approve an application for that either.

Dr. Taul stated that his decision on wind farms will be made for a particular application.

Lorn Clement asked that the opinion of the attendees regarding support for wind energy conversion systems in the Flint Hills be assessed. Chairman Larson responded that the ground

rules have been set and that the purpose of the hearing was not to determine whether or not to have wind farms in Riley County. Clement asked if at some point in the meeting a show of hands could be taken to demonstrate the number of wind energy opponents and proponents in the audience. Chairman Larson agreed.

Jan Garton, a Manhattan resident, questioned the definition of the visual dominance zone. She wanted to know how the distance requirement was established. She said the distance translates to less than a mile, which is not enough to some locations in Riley County. Monty Wedel said the concept came from research done by Paul Gipe, submitted by Lorn Clement and stated that the Board modified the distance, doubling the minimum distance suggested by Paul Gipe's model, based on simulations recently done by EDAW, Inc. out of Denver, CO.

Darrell Westervelt, 5151 Silver Creek Road, said that he has lived in Riley County for over 50 years. He stated that the regulations will determine whether or not the County has wind farms. He also stated that what is subsidized, the County will get more of and what is taxed, the County will get less of. He said that the regulations are equal to a tax, which in essence will discourage wind farms. He also said that he did not think that limiting clusters to 12 wind turbines would make a project feasible to build.

Monty Wedel said the cluster idea was also arrived at from research done by Lorn Clement, explaining that the intent was to prevent a "forest-type" look. He added that the separation distance between clusters is 1320 feet.

Chairman Larson addressed the comment regarding adoption of the regulations being a discouragement to wind developers. He said that the industry has provided information to help draft these regulations and was basically in agreement with much of the regulations.

Ron Klataske, a Manhattan resident and ranch owner, stated that he appreciates the Board's work on the regulations. He felt that guidelines 1, 2, 3, 11 and 15 should be listed as standards. He also stated that the setbacks were meant to protect adjacent landowners, but also restricts adjacent landowners from developing their own wind farm. He also stated that if developers from thousands of miles away are being welcomed to operate in the County, that property owners of adjacent counties should be allowed to make comments.

Lee Rucker, Manhattan resident, felt that turbines should only be permitted on junk land.

Margy Stewart, a Geary County resident, said that Geary County is modeling their wind farms regulations after the Riley County regulations. She felt sanctions should be put into place for developers that do not follow the regulations. She felt the criteria regarding the low frequency noise was all engineering criteria, but measurement criteria is needed also. She also felt the regulations should be run by prairie preservationists and Eco-tourism people. Referring to "natural/biological resources, Item 2, should avoid large areas of intact vegetation" she said that most of the Flint Hills would be protected under that definition. Under "Visual Impacts, Item 4, regarding avoiding sites that are readily visible from government designated scenic byways", she stated that Kansas has less public land than any other state and by only excluding sites next to scenic byways, it will destroy other areas of land.

Stan Koehn, resident on McDowell Creek Road, stated that he did not think that having wind farms would prompt Jeffries Energy Center to shut down or even slow down. His concern was that if a property owner adjacent to him had a wind farm and needed to transmit the electricity across his property, would he have to allow them the use of his property? Could they utilize eminent domain to use his property? What rights would he have?

Monty Wedel stated that he could not answer definitively as it was a complex legal issue but that such issues would be addressed in the application through the requirement to identify transmission routes.

Dick Seaton stated that a wind farm developer cannot use "eminent domain" as a method of extending utilities across private property, however, if a public utility, such as Westar Energy, purchased the wind farm, they could utilize eminent domain.

Wayne Hoffman, Orion Energy, stated he would like to respond to comments that were made but this meeting is for the proposed regulations. He thanked the Planning Board for spending the last 10 months of hard work on the proposed regulations. He stated that he was concerned about the change made at last month's Planning Board meeting that increased the visual dominance zone. He said that Orion Energy company strongly opposes the increase and feels it is not based upon factual information. He also stated that Orion Energy also strongly disagrees with having to do three (3) assessments of the affects wind towers will have on surrounding property values before the towers are even built. He explained that case studies done in the United States show that the rate of increase in value of property with homes in the viewshed of wind turbines increased 1300% times faster and that only one (1) property increased in value less than that amount. Hoffman also disagreed with the standard requiring a determination of "dynamic motion of wind turbine blades", which, as he stated, means a video analysis from each home. He exclaimed that he has never heard of this being done on any other project. He also stated that Orion Energy disagrees with the increase of the minimum distance for safety setback and the bond change.

Dick Seaton, a Riley County resident, stated that he would support a change in the regulations to prohibit all commercial wind power projects and allow only non-commercial systems.

Dennis Groves, a Geary County resident, questioned whether Riley County had the equipment to put out a fire at a wind farm site, especially if the turbines are located in the middle of prairie.

Kitty Pursley, a Deep Creek Road resident, said she is not against wind turbines unless they are located in the Flint Hills. She said that she feels that the height should be limited to 200' in order to eliminate the strobe light requirements of FAA. She also stated that she did not agree that the 1000-foot distance for notification for a particular application was sufficient, as towers in the simulation photos can be seen as far away as six (6) miles.

Larry Patton, Butler County resident, feels the regulations make an opportunity to convert the entire agricultural portion of Riley County to one large industrial area. He said that a 400' turbine on a clear day will impact people 20 miles away. The fragile prairie ecosystem and

views can be ruined by wind farms. Wind farms will have the most adverse affect on the County than any other industrial use ever allowed in Riley County.

Jane Link, Geary County resident, read a letter written by someone in Lincoln, Wisconsin regarding the affects of wind farms.

Michael Stubbs asked when his question about the legal advice the Planning Board had received would be answered.

Monty Wedel responded that the Riley County Counselor's opinion was that the County could not sustain a legal challenge if they chose to prohibit wind farms. He also stated that a land use attorney, Jim Kaup, reviewed the proposed regulations, felt they were very good and also agreed that prohibition was not legally defensible.

Roy Prestwood, Hunters Island resident, questioned what is in it for Riley County if a wind farm goes in. He was also concerned about the water aquifers being disturbed by the blasting deep into the ground. He also wondered about the return on investment and did not understand how a wind energy company makes money when the wind does not blow every day and the turbines are so expensive to install.

Jay Blue stated that everyone who can see the wind farms will be affected, not just persons who own property near them.

Sandra Clegg, a Geary County resident, asked what protection she has that the land around her will remain as it was when she purchased it 20 years ago.

Chairman Larson explained that although it would be nice to have areas that surround our property remain as it was when we first moved in, there is no guarantee under zoning that anyone will forever have the same view.

A show of hands was taken on people's opinions on wind farms. Eight persons were for wind farms and 36 against them being located in the Flint Hills.

Monty Wedel re-emphasized that wind farms will not be prohibited in Riley County regardless of whether the proposed regulations are adopted or not. If some sort of regulations are not adopted, an application can be made under the current regulations, which would either permit outright commercial wind turbines or force an evaluation of a proposal without an adequate review process. He stated that no regulations will be perfect or address every possible scenario. He explained that a lot of time has been spent preparing these regulations and that conditions can be attached to address concerns as applications are made. Mr. Wedel stated that the public has been involved in the formulation of these regulations for the past 10 months. Wedel suggested that minor changes could possibly be made by the Board of County Commissioners at their hearing.

The public hearing was closed.

Wedel explained the various options to the Board which were:

1. Forward a recommendation of approval to the Board of County Commissioners as the regulations were published;
2. Forward a recommendation of denial to the Board of County Commissioners as the regulations were published;
3. Forward a recommendation of approval to the Board of County Commissioners but with a specific list of suggested word changes; or
4. Table the matter one month to work on specific word changes.

Lorn Clement stated that he sympathized with Dan Ward and Ron Klataske's comments but also agrees that prohibition is not an option.

Buck Gehrt said he would like to see the guidelines remain as guidelines.

Becky Mosier said she appreciated the public's comments.

Dr. Taul asked what would happen if the proposed regulations were forwarded to the Commissioners as they are and the Commissioners wanted changes made.

Wedel explained that without discussing it with the County Counselor, he would assume that if substantial changes were made, the regulations would have to be republished and come back to the Planning Board but that there may be room for the Commissioners to make minor changes.

Buck Gehrt moved to recommend adoption of the proposed regulations as published to the Board of County Commissioners.

Dr. Taul seconded.

The motion carried 4-1.

Sherie Taylor announced that the Manhattan Urban Area Planning Board would consider the proposed regulations on September 20 at 7:00 p.m. and the Board of County Commissioners would consider them on October 4 at 10:15 a.m.

The meeting was adjourned at 10:45 p.m.